IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

MFA.No. 370 of 2000()

OPMV.707/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, WAYANAD, KALPETTA

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APPELLANT:

UNITED INDIA INSURANCE CO. LTD., KALPETTA, REPRESENTED BY ITS DEPUTY MANAGER, 3RD PARTY CLAIM CELL, KOCHI.

BY ADV. SRI.SIBY MATHEW
SRI.WILSON URMESE

RESPONDENTS:

1. KAMALAKSHI AMMA, MOTHER OF LATE VENUGOPALAN, THENERI, MUTTIL AMSOM, WAYANAD, VYTHIRI TALUK.
2. V.K.THANKAMMA, WIFE OF VENUGOPALAN, -DO- -DO-
3. SREEJITH, S/O. VENUGOPALAN, -DO- -DO-
4. V. SOYA, D/O.VENOGOPALAN, -DO- -DO-
5. SAJITH, S/O. VENUGOPALAN, -DO- -DO-
6. SREEJITH V., SREEJI NIVAS, VANHODE POST, VELLAMUNDA, MANANTHAVADY.
7. DR.N.A.SONI, NIRAPPIL PUTHENPURAYIL, ANCHUKUNNU, PANAMARAM, VIA. WAYANAD.

R1 TO R5 BY ADV. SRI.KALEESWARAM RAJ

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.2254/2000 IN M.F.A.NO.370/2000

DISMISSED

6/2/2007 Sd/- P.R.RAMAN, JUDGE.

P.R.RAMAN,J.

M.F.A.NO.370 OF 2000

Dated this the 6th day of February, 2007

JUDGMENT

This is an appeal at the instance of the United India Insurance Company Ltd., who was the 3rd respondent in O.P.(MV).No.707/1992 on the file of the Motor Accidents Claims Tribunal, Kalpetta. The original claimant, Sri A.K. Venugopalan, who sustained injuries as a result of a motor accident, filed O.P.(MV).No.707/92 before the M.A.C.T. He died subsequently and his legal representatives were impleaded as supplemental petitioners 2 to 6. Ultimately on the basis of the materials on record, compensation was quantified. After entering a finding that the accident is as a result of the negligence on the part of the driver, an amount of Rs.61,000/- with 12% interest was awarded. Since there was a valid insurance policy, the appellant was made liable to pay the

said amount. According to the appellant, the original claimant was only a pillion rider in a motor cycle and as such he is only a gratuitous passenger and no amount of compensation is payable by the Insurance Company on the basis of the act policy. He placed reliance on the decision of the Apex Court in **United India Insurance Co.Ltd. v. Tilak Singh (2006 (2) KLT 884 (SC))** which extends the principle in **Asha Rani's case ((2003) 2 SCC 223).** But on a careful reading of the plea raised in the written statement, it does not appear that the Insurance Company did raise a specific claim dis-entitling the claimant from receiving any compensation on the basis that he is a gratuitous passenger. Therefore, the party did not join the issue as to whether the original claimant was a gratuitous passenger or not. Even in the appeal memorandum presented before this Court no such plea raised. The present contention is not covered by the pleadings and as such does not

arise for consideration in this appeal.

2. Nextly it was contended by the learned counsel for the appellant that the claimant sustained injuries in 1992 and died in 1996. The Tribunal, as per the impugned award, categorically entered a finding that the death occurred after four years and as such death is not as a result of the accident and therefore the compensation could be awarded only on an injury case. It was then contended that since the claimant died, the proceeding will come to an end, as according to him, it is a personal claim. I cannot agree with the same. Claim petition was filed seeking compensation for the injury sustained in a motor accident. During the pendency of the proceedings claimant died and his legal representatives were got impleaded. Therefore, the legal representatives step into the shoes of the original claimant, who died during the pendency of the proceedings. Therefore, the legal

representatives are entitled to continue the proceedings and whatever amount due and payable to the claimant will be entitled to be received by the legal representatives.

3. No other points arise for consideration. I find no merit in this appeal. Accordingly, the appeal is dismissed.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

M.F.A.NO.370 OF 2000

JUDGMENT

6th February, 2007